IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

TUESDAY, THE 26TH JUNE 2007 / 5TH ASHADHA 1929

RCRev..No. 8 of 2005()

RCA.17/2003 of DISTRICT COURT, ALAPPUZHA
RCP.15/2001 of PRL.MUNSIFF COURT, CHERTHALA
.....

REVISION PETITIONER/APPELLANT/RESPONDENT:

SURESH, SON OF LAKSHMANAN,
CMC 22, MADAVANA, CHERTHALA P.O.

BY ADV. SRI.V.GIRI

RESPONDENT/RESPONDENT/PETITIONER:

DR.K.K.BAHULEYAN, GANGA,
THANNEERMUKKOM SOUTH VILLAGE,
MUHAMMA P.O., CHERTHALA.

BY ADV. SRI.G.GOPAKUMAR (CHERTHALA) FOR R1
SRI.P.F.THOMAS (SR)

THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON 26/06/2007 ALONGWITH RCR NO.15 OF 2005, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON I.A.NO.59/2005 IN R.C.R.NO.8/2005

DISMISSED.

26.6.2007 **SD/- J.B.KOSHY, JUDGE**

SD/- K.P.BALACHANDRAN, JUDGE

J.B.KOSHY & K.P.BALACHANDRAN,JJ.

R.C.R.NOS.8 & 15 OF 2005

Dated this the 26th day of June, 2007

O R D E R

KOSHY,J.

Respondents in these two cases filed three applications for vacating the rooms occupied by three different tenants as R.C.P.Nos.15, 16 and 17 of 2001. In R.C.P.No.16/2001 eviction was ordered and order became final. With respect to R.C.P.Nos.15/2001 and 17/2001, against the order of eviction passed under Section 11(3), tenants have finally come up before this Court. As far as the petition is concerned, it is true that earlier petition for eviction on the ground of subletting was dismissed and that order was finally approved by the Supreme Court. The present petition is not on the ground of subletting but under Section 11(3) for bona fide need for own occupation. The Rent control court and appellate authority found that the need pleaded was bona fide. The respondent

landlord is an eye specialist. After his retirement from Government service he was conducting the clinic in a rented premises at Changanassery. His native place is Cherthala. Therefore he wants to start his clinic in his own place. The tenants during the pendency of revision before the Rent Control Court pointed out that two rooms in the down stairs were vacated and if the landlord's need is bona fide, he can use the same. The court below accepted the contention of the landlord that the above two rooms along with four other rooms in the ground floor are in occupation of Civil Supplies Corporation. The court also found that even if those rooms are vacant the landlord wants to start the clinic in the first floor, as ground floor is not suitable to start an eye clinic. We are of the view that no interference is required with regard to the findings of the bona fide need of the landlord because landlord is a specialised doctor running an eye clinic in the leased premises far away from his native place and he wants to start an eye clinic in his own building near his residence and such need is bona fide.

2. The question is whether he is entitled to eviction

under Section 11(3) of the Act. The 1st proviso to Section 11(3) reads as follows:

> "Provided that the Rent Control Court shall not give any such direction if the landlord has another building of his own in his possession in the same city, town or village except where the Rent Control Court is satisfied that for special reasons, in any particular case it will be just and proper to do so:"

The contention of the revision petitioner at present is that all the six rooms are vacated by the Civil Supplies Corporation and landlord can conduct business in the ground floor. The landlord submitted that for the purpose of starting an eye hospital it is not suitable to start in the ground floor. He wants only first floor where the revision petitioners are occupying. Therefore we asked the counsel for the tenant whether they are prepared to occupy the rooms in the down stairs which are kept vacant. It is submitted that they are ready to shift so that the landlord can occupy the entire first floor. Counsel for the tenants submitted that they are prepared to occupy any of the two rooms in the ground floor, so that bona fide need of the landlord can be fulfilled by starting the hospital in the first floor.

After getting instructions from the client the counsel for the landlord submitted that it is true that Civil Supplies Corporation has vacated the six rooms and they are lying vacant. But they are not prepared to give any of those rooms also to the tenants. Now the question is whether subsequent vacation of the six rooms can have any effect on this petition or whether subsequent events will disentitle landlord from getting eviction under Section 11(3).

3. Counsel for the landlord submitted that in ***Valsan v. Furtal (2004 (3) K.L.T. 1046)*** it was held that merely because landlord has come into possession of the premises while the rent control proceedings are pending does not mean that he should occupy that premises rather than proceedings with the rent control proceeding initiated against another tenant. In that case the tenanted building was bona fide required by the landlord for starting a business of the residential house of a landlord having an area of 1000 sq. feet. He was using first floor for residential purpose. The rented premises occupied and vacated during the period by P.A.George and Company was in the ground floor. He wanted

to use that building (both first floor and ground floor) for the residential purpose. In these circumstances, Court found that merely because one of the tenants occupying part of his residential building has vacated the same will not satisfy the need expressed by the landlord to start a business in the petition schedule building in this case special reasons for non application of 1st Proviso was established by the landlord. In ***G.C.Kapoor v. Nand Kumar Bhasin and others ((2002) 1 SCC 610)***, it was held that the crucial date of determination of bona fide of the need is the date of filing of the eviction petition. But in ***Ramesh Kumar v. Kesho Ram ((1992) 2 SCC 623)***, the normal rule is the rights and obligations existing on the date of petition but while moulding the reliefs appropriate consideration of subsequent events should be made provided such events had an impact on those rights and obligations. In ***Hasmat Rai v. Raghumath Prasad ((1981) 3 SCC 103)*** Apex Court held that where possession is sought for personal requirement it would be correct to say that the requirement pleaded by the landlord must not only exist on the date of the action but must subsist till the final decree or an order for eviction. In ***Pratap Rai Tanwani v. Uttam Chand***

(2004 (7) SCALE 631) Supreme Court held that normally date of considering the bona fide need is the date of filing of rent control petition but in cases where subsequent events wholly satisfies the requirement of the landlord, rent control court can reject the plea under Section 11(3). In ***Manu v. Bhanumathy (2004 (1) K.L.T. 212)***, the spare room got vacant after filing of the rent control petition was sold by the landlord during the pendency of the case. This Court held that it will not affect the order of eviction as at the time of passing the order of eviction no other rooms were available. On the facts and circumstances of the case, bona fide need of the landlord is not satisfied because during the pendency of the proceedings another room got vacant was sold for urgent necessities. Learned counsel for the tenants submitted that in ***Raghavan v. Govindan Nambiar (1995 (1) KLT 596)*** it was held that subsequent event has to be considered especially the question is whether bona fide need subsists on the date of eviction also. In ***Molar mal (Dead) through LRS. v. Kay Iron Works (P) Ltd. ((2000) 4 S.C.C. 285)*** at paragraph 12, Apex Court found that if suitable premises came into possession of the landlord subsequently, that can be

a bar for refusing eviction for bona fide need and also held as follows:

> "On behalf of the landlord, it is next contended that the proviso does not apply to the facts of this case, since on the date of filing of the present eviction petition, the landlord had not obtained possession of any other tenanted premises. Subsequent possession obtained by it would not be an embargo for the landlord to claim possession of the present petition schedules premises. Elaborating this argument on behalf of the landlord, it is contented that if on the date of filing of the eviction petition, a landlord has not by then obtained possession of any other premises, then the proviso would not be a bar for the landlord to file an eviction petition and obtain possession of another premises, even though during the pendency of the petition, he obtains possession of other premises. The landlord wants us to give a literal meaning to the words "entitled to apply again" found in the proviso. If we give such a meaning to the words "entitled to apply again" without taking into consideration the object and scheme of the Act, the proviso may given an impression that the embargo incorporated in that proviso would be applicable only at the stage of filing of the eviction petition. But such an interpretation will run counter to the very scheme of the Act. It goes without saying that the Haryana Urban (Control of Rent and Eviction) Act, 1973 like any other similar Act in other States in India is an enactment which controls the fixation of rent and eviction of th tenants from rented premises to which the Act is applicable. This Act controls the right of a landlord to seek eviction of tenanted premises, it restricts the right of a landlord to seek eviction on those grounds mentioned in the Act. As a matter of fact, a landlord can seek eviction only on the grounds enumerated under the Act and on no

other grounds. This is clear from the language of Section 13(1) of the Act which in specific terms says that a tenant in possession of a building or rented land shall not be evicted therefrom except in accordance with the provisions "of this section". Section 13 enumerates various grounds on which a landlord can seek possession. This right is further restricted if the landlord has obtained possession of similar premises under the same provisions of law by the proviso. Now the question is whether the bar under the proviso is applicable only to the filing of an application or it is a bar on the right of the landlord. If the interpretation suggested by the landlord is accepted then the bar will be on the application by the landlord and not on his right to evict. This, in our opinion, will not be the correct interpretation of the proviso. A careful perusal of the various provisos found in sub-section (3) of Section 13 of the Act clearly shows that the legislature intended to further restrict the right of a landlord to seek eviction under the clauses mentioned in that sub-section apart from the restrictions imposed in Section 13 of the Act. For example, if the landlord is seeking eviction of a tenant on the ground that the same is required for the use of his son then, in view of the proviso applicable to that sub-section, he can seek eviction of the premises only once. Similarly, if the landlord is seeking eviction for his own occupation under Section 13 (3)(b) of the Act then by virtue of the proviso applicable to that sub-section, he landlord can seek such eviction only once in regard to the premises of the same nature. Therefore, in our opinion, the bar imposed by the proviso is in fact a bar on the right of the landlord to seek actual eviction and not confined to the filing of the application for eviction. On behalf of the landlord, it is contended that while interpreting a statute the courts should apply the rule of literal construction and if it is so interpreted then the wording of the proviso would show that the restriction imposed by the proviso is restricted to the stage of filing of the application for eviction only. We agree

> with this contention of the landlord that normally the courts will have to follow the rule of literal construction which rule enjoins the court to take the words as used by the legislature and to give it the meaning which naturally implies. But, there is an exception to this rule. That exception comes into play when application of literal construction of the words in the statute leads to absurdity, inconsistency or when it is shown that the legal context in which the words are used or by reading the statute as a whole, it requires a different meaning. In our opinion, if the expression "entitled to apply again" is given its literal meaning, it would defeat the very object for which the legislature has incorporated that proviso in the Act in as much as the object of that proviso can be defeated by a landlord who has more than one tenanted premises by filing multiple applications simultaneously for eviction and thereafter obtain possession of all those premises without the bar of the proviso being applicable to him. We are of the opinion that this could not have been the purpose for which the proviso is included in the Act. If such an interpretation is given then the various provisos found in sub-section (3) of Section 13 would become otiose and the very object of the enactment would be defeated. Any such interpretation, in our opinion, would lead to absurdity. Therefore, we have no hesitation in interpreting the proviso to mean that the restriction contemplated under that proviso extends even up to the stage when the court or the tribunal is considering the case of the landlord for actual eviction and is not confined to the stage of filing of eviction petition only."

Since all rooms in the ground floor are still vacant and tenant expressed willingness to shift the tenanted premises to any of

the rooms in the ground floor and landlord can start the hospital in he first floor as he required, we are of the prima facie opinion that the evidence has to be re-appreciated by the court below. Question whether landlord can use the rooms in the first floor and whether tenant can be permitted to occupy the premises in the ground floor etc. can be decided by a rent control authority or whether 'bona fide requirement' pleaded is satisfied by subsequent eviction and whether tenants succeeded in getting the benefits on the basis of the 1st Proviso to Section 11(3) etc. have to be decided with respect to the evidence. Both parties are allowed to adduce evidence, if necessary. Therefore we remand the matter for the above purpose. Parties may appear before the Rent Control Court on 6.8.2007.

J.B.KOSHY, JUDGE

K.P.BALACHANDRAN, JUDGE

prp

J.B. KOSHY AND
K.P.BALACHANDRAN, JJ.

M.F.A.NO./200

JUDGMENT

Dated:27th June, 2007